

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEVE C. FRASER)	
Claimant)	
VS.)	
)	Docket No. 223,103
LAFARGE CORPORATION)	
Respondent)	
AND)	
)	
CONTINENTAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the January 6, 1999 Award entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on July 20, 1999.

APPEARANCES

Carlton W. Kennard and Thomas E. Hayes, both of Pittsburg, Kansas, appeared for the claimant. Kurt W. Ratzlaff of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

After the parties' Regular Hearing stipulations, there remained several issues for the Administrative Law Judge to decide. Among the remaining issues was a question concerning the compensability of the claim. Specifically, whether claimant sustained injury by accident that arose out of and in the course of his employment with respondent. But neither party presented any evidence. Soon after the expiration of terminal dates and before the entry of the award, claimant filed a motion for an extension of terminal dates. In the January 6, 1999 Award that motion was denied by the ALJ. Because the record was devoid of any testimony or other evidence, the ALJ found that claimant had failed to sustain his burden of proof on the issues presented and entered an award denying compensation.

Claimant appeals the ALJ's denial of his motion to extend terminal dates and requests an opportunity to present evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

- (1) This claim was scheduled for regular hearing on October 21, 1998. No testimony was presented at that time. The parties entered into certain stipulations and the issues were identified. It was agreed that the claimant's testimony would be taken later by deposition. The ALJ set terminal dates of November 20, 1998 for the claimant and December 21, 1998 for the respondent.
- (2) No depositions were taken and no other evidence was introduced into the record. On December 22, 1998 respondent filed its submission letter to the ALJ.
- (3) On December 30, 1998 claimant filed a motion to extend terminal dates, stating as the basis for his motion "to allow the Claimant to produce evidence on the issues of compensability and disability. Claimant unavoidably omitted this evidence due to excusable neglect as a result of miscommunication among the Claimant's attorneys."
- (4) In the ALJ's January 6, 1999 Award the Claimant's Motion to Extend Terminal Dates was denied because "the Claimant failed to further explain what neglect was excusable."
- (5) In his letter brief to the Appeals Board, claimant elaborated somewhat upon circumstances that could form the basis for a showing of good cause.¹ In the interest of justice, the Appeals Board finds that this matter should be remanded to the ALJ for a hearing on the Claimant's Motion to Extend Terminal Dates so as to afford the parties an opportunity to fully inform the court concerning the merits of the request.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this matter should be, and is hereby, remanded to the Administrative Law Judge for a hearing on claimant's motion as above indicated and for such further and additional proceedings and orders as may be necessary.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

¹ K.S.A. 44-523(b)(3).

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas E. Hayes, Pittsburg, KS
Kurt W. Ratzlaff, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director